

IN THE MATTER OF	:	BEFORE THE
ROMAN CATHOLIC	:	HOWARD COUNTY
ARCHBISHOP OF	:	BOARD OF APPEALS
BALTIMORE	:	
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 08-046C

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### **DECISION AND ORDER**

On November 3, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of the Roman Catholic Archbishop of Baltimore to modify the approved site of a religious facility and private school conditional use in an R-ED (Residential: Environmental Development) Zoning District, for a proposed resubdivision of the eastern area of the Property, filed pursuant to Section 131.B of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. At the outset of the hearing, Mr. Oh stated the Petitioner agreed with and accepted the Technical Staff Report ("TSR").

### **FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The 26.4 -acre, irregularly shaped property is located in the 1<sup>st</sup> Election District, on the

east side of Ilchester Road about 300 feet north of Landing Road. It has a street address of 4801 Ilchester Road and is referenced on Tax Map 31, Grid 10, as Parcel 260 (the "Property").

2. The Property is the site of a religious facility and private school, Our Lady of Perpetual Help. The improvements are generally located in the Property's western section and include: a two-story rectory, a detached garage, a two-store parish center building and parking lot to its west, a small frame building, a brick church and driveway, more parking lots to the church's north and east, a two-story brick school to the church's southwest, a multi-purpose hall approved in BA Case No. 01-051C, a playground, and additional parking lots wrapping around the buildings.

3. In the southeast corner of the southernmost parking lot is a second garage. To the east and down slope, is a sports field, the area beyond which generally wooded. This is the area the Petitioner proposes to resubdivide.

4. The Property has two access points from Ilchester Road. The first is situated opposite Beechwood Road. The second is situated in the Property's southwest section.

5. Vicinal Properties. Parcel 609 to the north is also zoned R-ED and is improved with a single-family detached dwelling fronting on Ilchester Road. The R-ED-zoned property to the southeast is improved with newer, single-family detached residences. Across Ilchester Road and south of Beechwood Road are multiple R-20 (Residential: Single) zoned single-family detached dwellings.

6. Roads. Ilchester Road has two travel lanes and approximately 24± feet of paving within an existing 40-foot right-of-way. The posted speed limit is 30 MPH.

7. The estimated sight distance from the existing southern driveway entrance is more than 500 feet to the north and south. There is some sight blockage to the north, owing to topography, but the entrances were previously approved and no new entrances are proposed. The traffic volume on Ilchester Road south of the county line was 1,688 average daily trips as of January 2007.

8. The Property is served by public water and sewer.

9. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential Areas." The General Plan Transportation Map depicts Ilchester Road as a Minor Collector.

10. In BA Case No. 01-051, the Board of Appeals approved the Petitioner's request for a multi-purpose building enlargement to an existing religious facility and private school and various site improvements, as well as a library trailer and a school addition.

11. The Petitioner is requesting a modification of the lot coverage approved in BA Case No. 01-051 to reduce the conditional use site from 26.4 acres to 17.91± acres (the "Revised Site Area") in order to resubdivide an eastern portion of the Property for new single-family detached dwellings. The petition states all criteria applicable to Structures Use Primarily for Religious Activities under Section 131.N.39 will be met.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude as follows:

#### **I. General Criteria for Conditional Uses (Section 131.B)**

Section 131.B requires me to evaluate the proposed conditional use's harmony with the land uses and policies indicated in the Howard County General Plan for the R-ED zone. In evaluating a plan under this standard, I must consider (a) the nature and intensity of the use, the size of the

site in relation to the use, and the location of the site with respect to streets giving access to the site; and (b) if a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate, given the adequacy of proposed buffers and setbacks.

In this case, the Petitioner is not proposing any change in the nature and intensity of the use. The proposed 17.91-acre Revised Site Area encompasses all the improved western section of the Property, and will meet all existing and required buffers and setbacks. Because the Petitioner is not proposing any new development, and the Board of Appeals in BA Case No. 01-051C concluded that any adverse impacts such as noise, dust, fumes, odors, lighting, vibrations, hazards, or other physical conditions will not be greater at the original site than generally elsewhere, I here conclude the nature of adverse impacts will not change.

In BA Case No. 01-051C, the Board of Appeals found that the nature, location, and height of structures, walls and fences, and the nature and extent of the landscaping on the site were such that the use would not hinder or discourage the development and use of adjacent land and structures more at the subject site than generally elsewhere. Because the reduction of the Conditional Use site does not alter this conclusion, the conditional use request complies with this requirement.

The parking areas are adequate for the existing uses. Parking areas, loading areas, driveways, and refuse areas will remain properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties. The ingress and egress drives will continue to provide safe access with adequate sight distance, based on actual conditions.

**II. Specific Criteria for Structures Used Primarily for Religious Activities (Section 131.N.39)**

Structures used primarily for religious activities are permitted in the R-ED zoning district subject to three requirements.

**a. Lot coverage shall not exceed 25 percent of lot area.**

The total lot coverage of the Revised Site Area is 17.91± acres. Based on the 6 percent lot coverage of the 26.4-acre site approved in BA Case No. 01-051C, and a 33± percent reduction in site area, the lot coverage of the Revised Site Area will not exceed 25 percent, I conclude the Petitioner has demonstrated compliance with the requirement that the combined area of the use would be less than 25%.

**b. Structures used primarily for religious activities may be erected to a greater height than permitted in the district in which it is located, provided that the front, side and rear setbacks shall be increased one foot for each foot by which such structure exceeds the height limitation.**

This section is not applicable.

**c. The Hearing Authority may approve parking facilities which are accessory to a religious facility, and are located on a separate lot, but do not meet the location requirements of subsection 133.B.4.D of the parking regulations by being separated from the religious facility by a public street, if the Hearing Authority finds that the accessory parking facility complies with the following criteria:**

- (1) The accessory parking facility is not separated from the lot containing the principal use by an arterial highway of any category.**
- (2) A pedestrian street crossing connecting the accessory parking facility lot to the principal use lot is provided and is made clearly noticeable to drivers by means of both pavement marking and signs.**
- (3) The pedestrian street crossing is safe, based upon such factors as, but not limited to: traffic volume at the times(s) of the use of the accessory parking**

facility; practical traffic speeds; sight distance; length of the crossing; and adequate markings and signage.

(4) The entire pedestrian pathway from the accessory parking facility to the principal religious facility is a durable, paved, no-step path.

This criterion does not apply to the conditional use request.

### **III. Specific Criteria for Private Schools (Section 131.N.46)**

The TSR observes that the Board of Appeals approval of BA 01-051 included a condition requiring the Petitioner to commence a Phase Two school addition (The "New Addition") by August 21, 2008. Because the New Addition as shown on the BA 01-051C Conditional Use Plan is not under construction, this phased addition is void, there being no record of the Hearing Authority having granted the necessary extension.

The Petition and the TSR do not address whether the requested Revised Site Area complies with the criteria in this section. In BA Case No. 01-051C, the Board of Appeals concluded the proposed addition to the existing school complied with all applicable criteria. My approval of the Petitioner's request to modify the Revised Site Area is therefore necessarily conditioned on the Petitioner's continued compliance with these criteria, including the required 50-foot setback from adjoining properties, which would include any future properties created by the proposed resubdivision.

**ORDER**

Based upon the foregoing, it is this 1<sup>st</sup> day of December 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of the Roman Catholic Archbishop of Baltimore to Columbia Presbyterian Church to modify the area of the conditional use lot coverage approved in BA Case No. 01-051C, from 26.4 acres to 17.91± acres (the Revised Site Area) in an R-ED (Residential: Environmental Development) Zoning District, based on a proposed resubdivision of the Property's eastern area, is **GRANTED**.

**Provided**, however, that:

1. All criteria applicable to Structures Used Primarily for Religious Activities under Section 131.N.39 shall continue to be satisfied.
2. All criteria applicable to Private Schools under Section 131.N.46 shall continue to be satisfied.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
Michele L. LeFaivre

Date Mailed: 12/3/08

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.